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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,866	05/14/2007	Pablo Roman Curutchet Ferreira		4624

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EXAMINER	
ANDERSON, JERRY W	

ART UNIT	PAPER NUMBER
1781	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/581,866	CURUTCHET FERREIRA ET AL.	
	Examiner	Art Unit	
	Jerry W. Anderson	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 August 2011*.

2a)☒ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) *1-3* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *1-3* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Examiner acknowledges the receipt of the Applicant's Amendment, mailed 08/19/11. Claims 1-3 amended, claims 1-3, pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shults, G.W., et al., (3,845,227) in view of Katayama, H., et al. (5,939,112)

5. **Regarding claims 1 and 3**, Shults discloses the claimed invention, including cutting of lean muscle meat from carcass of beef , deboning, removing fat, into chunks, (lines 51-54, col. 2, '227) using a brine 1815 gms NaCl, 20 gms sodium nitrite, in 8,650 gms water, (line 30-35, col. 3, '227), at 15 % wt percent of the meat, (line 14, col. 4, '227) after brining, place meat in film container cooking in water at 90-100ºC, (lines 2-3, col. 3, '227), hermetically packaging in second containers, (lines 4-6, col. 3, '227) freezing to -25ºC ±20ºC, (line 17, col. 3, '227) sterilize with high energy ionizing radiation at 2.0-6.0 megarads, (lines 18-21, col. 3, '227).

6. However, Shults lacks injection of the brine, and tumbling meat for up to 24 hours, under low pressure and refrigeration.

7. Katayama teaches injection of brine into meat, (lines 46-58, col. 11, '112) and tumbling under reduced pressure, at from 3 rpm to 30 rpm under pressure ranging from about 0 mm Hg to 760 mm Hg, temperature ranging from about 1ºC to 10ºC, for 1 minute to 10 hours, (lines 31-35, col. 15, '112) wherein the process produces a processed meat with improved water retention capability, improved

meat quality, and that produces meat efficiently and in a shorter time, (lines 31-45, col.1, '112)

8. Shults and Katayama are analogous art in that all are concerned with the preparation of meat for human consumption.

9. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the methodology of Shults by the use of the injection of brine, the refrigeration and vacuum tumbling of Katayama, in order to provide processed meat with improved water retention capability, improved meat quality, and that produces meat efficiently and in a shorter time because the brining of Shults would be considered as functionally equivalent to brining by injection of Katayama.

10. One of ordinary skill in the art would know that 20 megarads is equivalent to 20 kGys.

11. One of ordinary skill in the art would find that the procedure of Shults of placing the meat in film container and heating at 90-100° for 75-100 minutes performs substantially the same result in an equivalent manner as the applicant's heating to 70-85°C and holding for a time of 15-30 minutes.

12. One of ordinary skill in the art would find it obvious that the transfer of the cooked meat from one container to a secondary container (lines 4-6, col. 3, '227)

would involve some measure of cooling of the meat, similar to the procedure of the instant application. Further, the temperature of 26°C is about 78°F, approximately the same as room temperature, and the transfer of a hot cooked meat product to a secondary container would require handling of said hot cooked meat, and therefore, in the interest of personnel safety, cooling of said meat would be an obvious step in the processing.

13. **Regarding claim 2,** Shults, and Katayama disclose the claimed invention including, the brine solution is about 20.2 % NaCl, and the sodium nitrite is about 0.2 %, and that the salt concentration may vary from 0.5%-4% in final product, (lines 38-39, col. 3, '227) and the sodium nitrate and sodium nitrite may vary from about 10 % to 100 % of the amounts allowed by USDA regulations, 500 ppm nitrate and 200 ppm nitrite, (lines 43-48, col. 3, '227)

Response to Amendment

14. The applicant having amended claims 1, 2, and 3, the 35 USC §103 rejections thereunto are maintained.

Response to Arguments

15. Applicant's arguments filed 08/19/11 have been fully considered but they are not persuasive.

16. The applicant presents the following arguments, (1) the combination of Shults and Katayama is outside the skill of one of ordinary skill, (2) the cooling step is not disclosed in the prior art, (3) the individual prior art references do not disclose each and every element of the claimed invention, and (4) Shults does not teach freezing of the meat.

17. To reply, the first argument concerns the basic motivation that would lead one of ordinary skill in the art to combine Shults and Katayama.

18. In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or

motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and KSR International Co. v. Teleflex, Inc., 550 U.S. 398, 82 USPQ2d 1385 (2007).

19. In this case, both Shults and Katayama are directed to producing a tender cut of meat, as is the applicant. (lines 30-35, col. 1, '227, line 40-45, col. 5, '112, ¶5, pg. 2, specification)

20. Both Shults and the applicant are directed to producing a tender cut of corned beef, treating the meat with a brine containing salt and nitrites, as does the applicant. (lines 13-17, 55-60, col. 2, '227, ¶ 1, pg 3, ¶4, pg 4, ¶4, pg 9, specification)

21. The similarities between the Shults and the Katayama are: both are preparing tender meat for human consumption, both are using brines containing salt, both are freezing the meat, both are cooking the brined treated meat, and the differences are: Shults is using radiation, cooking in sealed bags, Katayama is injecting the brine into the meat and vacuum tumbling or massaging. The incorporation of the well known procedure for treating meat with a brine, injection and vacuum tumbling, as used by Katayama, into the procedure of Shults could be

accomplished with a reasonable expectation of success. As such, this would be simple substitution of one tried and true method for another, as per KSR. Mpep 2141(III)(B)

22. As to the cooling step, the food product was cooked and then transferred from one container to another, it would have been obvious to one of ordinary skill in the art that the food product would be cooled to that extent that handling of the food produce could be performed with inducing harm or possible injury to the workers, and further, 26°C is about 78°F and is close to room temperature, and could be handled in a safe manner by the workers.

23. As to the applicant stating that Shults does not teach massaging at reduced pressure, it is well established that there is no need for each reference to contain each and every limitation of the claimed invention. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any

specific hint or suggestion in a particular reference. In re Bozek, 416 F .2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). Mpep 2145 (III, IV)

24. Finally, the applicant states that Shults does not teach that the meat is frozen, however, Shults does teach that the meat is irradiated at -20°C, and it is well known in the art that meat when cooled to -20°C is frozen, and thus there is no need for the prior art to directly and explicitly state that meat at a temperature of -20°C is frozen, since said meat is, indeed, frozen.

25. The 35 USC 103 rejection is maintained.

Conclusion

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will

be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry W. Anderson whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. Sayala/
Primary Examiner, Art Unit 1781

/Jerry W. Anderson/
Examiner, Art Unit 1781